

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.331 OF 2004
IN
SUMMARY SUIT NO.895 OF 2004

Ramadhar S.Gupta ..Plaintiff

Vs.

Diya Darshan Co-op.Hsg.Society ..Defendants

Mr.Amit Yadav for the plaintiff

Mr.B.H.Mehta for the defendants

CORAM : S.U.KAMDAR, J
DATED : 21ST SEPTEMBER, 2005

P.C.:

. The present suit is filed on a written contract for carrying out work by the plaintiff in the defendant no.2 society building. The same is duly certified by the Architect in terms of the contract. The balance amount due and payable is Rs.11,32,472/-. Plaintiffs are also seeking refund of retention amount as provided under the agreement for Rs.1,48,866.95. Thus total claim with interest is Rs. 20,89,651.18. The learned counsel for defendants states that payment are made on account and therefore present suit is not maintainable as summary suit. There is no substance in the aforesaid contention. It can be seen from the

particulars of claim that the claim is in respect of third bill which has been duly certified by the Architect for the retention amount. Thus there is no question of suit on account. Defendant further contends that the measurements are not carried out and therefore amount is not due and payable. I find no substance. In view of the fact that bill is duly certified by the architect defendants are liable to pay the amount and plaintiff is entitled to same. However, with a view to give an opportunity to the defend the suit, I direct the defendants to deposit a sum of Rs.20 lacs within 4 weeks failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection

within four weeks thereafter. Suit to be on board
of the learned Judge taking Commercial Causes.